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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/769,223	01/24/2001	Raoul E. Benveniste	015280196310	2782

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EXAMINER

PARKIN, JEFFREY S

ART UNIT

PAPER NUMBER

1648

DATE MAILED: 05/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/769,223

Applicant(s)

BENVENISTE ET AL.

Examiner

Jeffrey S. Parkin, Ph.D.

Art Unit

1648

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 April, 2004, FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 06 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 09 April 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 17, 32, 33, 40-44

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: See Continuation Sheet

Jeffrey S. Parkin, Ph.D.
Examiner
Art Unit: 1648

Continuation of 2. NOTE: Applicants are reminded that they cannot, as a matter of right, amend any finally rejected claims, add new claims after a final rejection (see 37 C.F.R. 1.116), or reinstate previously canceled claims (see M.P.E.P. 714.13). The claims, if amended as proposed, would NOT avoid any of the rejections set forth in the last Office action, potentially raise the issue of new matter, and present new issues requiring further consideration or searching. Accordingly, the amendment after final does not place the application in condition for allowance or in better condition for appeal.

Continuation of 5. does NOT place the application in condition for allowance because: The request for reconsideration, and arguments contained therein which have been previously considered, do not avoid any of the rejections set forth in the last Office action .

Continuation of 10. Other: The affidavit filed pursuant to 37 C.F.R. 1.131 has NOT been considered. First, the purpose of a 37 C.F.R. 1.131 affidavit is to overcome a prior art rejection by proving invention of the claimed subject matter by applicant prior to the effective date of the reference or activity relied upon in the rejection. The rejection of the claims is currently based upon 35 U.S.C. 112, first paragraph considerations, not a prior art rejection. Thus, an affidavit or declaration under 37 C.F.R. 1.132 would be appropriate. Second, the affidavit will not be considered because good and sufficient reasons why it was not earlier presented have not been provided.